

HIGH TECH BROADBAND COALITION



Ex Parte Submission

August 2, 2005

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 02-52; GN Docket No. 00-185; CC Docket Nos. 02-33, 95-20 & 98-10

Dear Chairman Martin:

The High Tech Broadband Coalition (“HTBC”) urges the Commission to expeditiously adopt the agency’s tentative conclusion iterated in the above referenced proceeding that wireline broadband Internet access services are Title I “information services” that should be subject only to minimal regulation. HTBC has long advocated this position and, in light of the recent U.S. Supreme Court decision in *Brand X* which upheld the FCC’s conclusion classifying cable modem service as an “information service,” HTBC urges the Commission to take the logical next step and classify wireline broadband services as Title I “information services.” Compared to cable modem services, competing wireline broadband services are subject to disparate regulatory treatment due to their continued classification as “telecommunications services.” Timely elimination of this regulatory disparity will support further investment and deployment of broadband facilities by all broadband platform providers.

HTBC further urges the Commission to endorse the broadband connectivity principles that HTBC enunciated in its September 25, 2003 ex parte filing.¹ Specifically, HTBC identified the following principles as essential to protecting the interests of consumers subscribing to broadband services:

- 1) Consumers should receive meaningful information regarding their broadband service plans,
- 2) Broadband consumers should have access to their choice of legal Internet content within the bandwidth limits and quality of service of their service plans;

¹ HTBC Letter to Chairman Powell, September 25, 2003, CS Docket No. 02-52; GN Docket No. 00-185; CC Docket Nos. 02-33, 95-20 & 98-10

- 3) Broadband consumers should be able to run applications of their choice, within the bandwidth limits and quality of service of their service plans, as long as they do not harm the provider's network; and
- 4) Consumers should be permitted to attach any devices they choose to their broadband connection at the consumer's premises, so long as they operate within the bandwidth limits and quality of service of their service plans and do not harm the provider's network or enable theft of services.

HTBC has consistently maintained that it is premature to promulgate regulations based on these connectivity principles in the absence of demonstrable evidence of their widespread abuse by broadband providers². HTBC nonetheless urges the Commission to explicitly endorse these principles in the present proceeding. Such an endorsement will ensure that consumers are able to enjoy the full benefits of the Internet and select the best combination of prices, services, and features. HTBC finds it equally important for the Commission to follow the U.S. Supreme Court's lead in *Brand X* and clearly assert and preserve the agency's authority under Title I to address these issues as appropriate.³

Finally, HTBC urges the Commission, as first stated in our September 25, 2003 filing, to vigilantly monitor cable modem and DSL broadband services and to expeditiously review and resolve any complaint concerning these connectivity principles. A clear statement from the Commission that it will take prompt enforcement action when presented with information about activity contrary to these connectivity principles would provide necessary certainty to the high tech community (equipment manufacturers and content developers) and ensure that the hallmarks of the Internet will endure in the broadband future.

Respectfully submitted,

BUSINESS SOFTWARE ALLIANCE

NATIONAL ASSOCIATION OF
MANUFACTURERS

By: /s/ Robert Holleyman
Robert Holleyman
President and CEO

By: /s/ John Engler
John Engler
President

² As a broad coalition of associations, we commonly support the endorsement of the connectivity principles. However, individual members of the coalition have suggested and may suggest that rules or other actions are necessary to ensure adherence to the principles.

³ Acknowledging the breadth of the FCC's Title I authority, the U.S. Supreme Court stated that "the Commission has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications" *National Cable and Television Ass'n v. Brand X Internet Serv.*, 128 S. Ct. 2688 (2005).

CONSUMER ELECTRONICS ASSOCIATION

By: /s/ Gary Shapiro
Gary Shapiro
President and CEO

INFORMATION TECHNOLOGY
INDUSTRY COUNCIL

By: /s/ Rhett Dawson
Rhett Dawson
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cc: Commissioners Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
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INDUSTRY ASSOCIATION

By: /s/ George Scalise
George Scalise
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By: /s/ Matthew Flanigan
Matthew Flanigan
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